

# Let's Explore the Final **403(b)** Regulations...



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# 403(b) Regulations

## Published 7/26/2007

1

### General Effective Date

- Taxable years beginning after **December 31, 2008**
- Notable exceptions

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1 – [1.403\(b\)-11\(a\)](#)

## Delayed Effective Dates<sup>2</sup>

- ▶ Collective bargaining situations
- ▶ Removal of certain permissively excluded groups for universal availability purposes
- ▶ Certain governmental 403(b)s
  - ▶ For limited universal availability exclusions

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2 – [1.403\(b\)-11\(b\)-\(d\)](#)

## Grandfathered Items

- ▶ Annuities – In-service distributions
- ▶ Incidental life insurance contracts
- ▶ Post Rev. Rul. 90-24 contract exchanges
  - ▶ Prior 90-24s grandfathered

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3 – [1.403\(b\)-11\(e\)-\(g\)](#)

# Regulation Highlights<sup>4</sup>

## ► First and Foremost

- A 403(b) program must be maintained pursuant to a written DC plan
- Both form and operation satisfy 403(b) and contain all terms & conditions for eligibility, limitations and benefits under the plan
- See model plan provisions Revenue Procedure 2007-71

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4 – [1.403\(b\)-3\(b\)\(3\)](#) and [1.403\(b\)-3\(d\)\(1\)\(i\)&\(ii\)](#)

# Revenue Procedure 30 2007-71

- Issued 11/27/07
- Published in IRB 2007-51 on 12/17/07
  - Effective 12/17/07
  - Model plan language for public school use
  - Timeliness of plan/amendments
  - Guidance on transitional period

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# ERISA Implications

- Non-ERISA 403(b)s
  - Written plan – Not automatically ERISA
  - See [www.dol.gov/ebsa](http://www.dol.gov/ebsa) for guidance -  
DOL Field Advisory Bulletin 2007-2  
issued 7/24/2007
- Governments not subject to ERISA

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# Regulation Highlights<sup>5</sup>

- ▶ Underlying annuities/custodial accounts
  - ▶ In addition to language on 401(a)(30), 401(a)(31), and 401(g) (annuities only):

Funding contract must also have language satisfying 401(a)(9) and the incidental benefit requirements.

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5- [1.403\(b\)-3\(a\)\(4\)-\(8\)](#)

# Regulation Highlights

- Vesting is recognized – non-electives only <sup>6</sup>
- Elective deferral ordering – 402(g)(1), 402(g)(7), 414(v) <sup>7</sup>
  - 402(g)(7) – formula required
  - See examples <sup>8</sup>
- Disaggregation 401(a)/403(b) <sup>9</sup>
- Post-severance elective deferrals <sup>10</sup>
  - Regular, sick and vacation pay

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6 - [1.403\(b\)-3\(d\)\(2\)](#)

7 - [1.403\(b\)-4\(c\)\(3\)\(iv\)](#)

8 - [1.403\(b\)-4\(c\)\(5\) examples #4, 11 and 12](#)

9 - [1.403\(b\)-4\(b\)\(2\)](#)

10 - [1.403\(b\)-3\(b\)\(4\)\(ii\)](#)

# Regulation Highlights<sup>11, 12</sup>

- ▶ Determining years of service
  - ▶ 402(g)(7) – 15 year catch-up
  - ▶ Includible compensation for contribution limit (lesser of 100% of includible compensation or overall limit)
- ▶ Years of service = Employee's annual work period/not taxable year

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11 - [1.403\(b\)-4\(e\)\(2\)](#)

12 - [1.403\(b\)-4\(e\)\(5\)](#) and [1.403\(b\)-4\(e\)\(9\) examples 1](#) and [2](#)

## Regulation Highlights

- ▶ Non-elective contributions for the 5 taxable years after employment plus end-of-taxable year when employment ceases<sup>13</sup>
- ▶ No additional contributions after death<sup>14</sup>

See examples cited in  
Addendum

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13 - [1.403\(b\)-4\(d\)\(1\)](#)

14 - [1.403\(b\)-4\(d\)\(2\) examples 1, 2, and 3](#)

## Regulation Highlights

- For 403(b) and 402(g) purposes, elective deferrals are limited to contributions under a cash or deferred election as defined under 401(k) <sup>15</sup>
- Hardship distributions follow 401(k) rules and safe harbors <sup>16</sup>

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15 – [1.402\(g\)\(3\)-1\(b\)](#)

16 – [1.403\(b\)-6\(d\)\(2\)](#)

# Regulation Highlights

## Elective Non-Discrimination/ Universal Availability<sup>17</sup>

- ▶ Effective opportunity needed to satisfy universal availability<sup>18</sup>
  - ▶ Meaningful notice
  - ▶ Election timing
- ▶ Universal availability generally applies separately to each common law entity<sup>19</sup>

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17 - [1.403\(b\)-5\(b\)\(1\)](#)

18 - [1.403\(b\)-5\(b\)\(2\)](#)

19 - [1.403\(b\)-5\(b\)\(3\)](#)

## Regulation Highlights

Effective opportunity to make cash or deferred election to a 403(b) in order to satisfy the universal availability requirement embraces a 401(k) anti-conditioning approach

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# Regulation Highlights

## Universal Availability

### Permissive Exclusions

- Employees eligible under other deferral plans<sup>20</sup>
- Non-resident aliens
- Students
- Those who normally work less than 20 hours per week<sup>21</sup>

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20 - [1.403\(b\)-5\(b\)\(4\)\(ii\)\(A\)](#)

21 - [1.403\(b\)-5\(b\)\(4\)\(ii\)\(E\)](#)



## Regulation Highlights<sup>22</sup>

- For determining if an employee works < 20 hours/week so that they can be permissively excluded from universal eligibility:
  - On date of hire, employer must reasonably expect employee to work < 1000 hours for ensuing 12-month period

**AND...**

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22 - [1.403\(b\)-5\(b\)\(4\)\(iii\)\(B\)](#)

## Regulation Highlights

- ▶ For determining if an employee works  $< 20$  hours/week so that they can be permissively excluded from universal eligibility:

**AND...**

- ▶ For every subsequent plan year or 12-month period the employee actually worked  $< 1000$  hours in the preceding 12-month period

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## Regulation Highlights

- ▶ So, a 1000 hour standard...
- ▶ If subject to ERISA see 1.403(b)-5(b)(4)(iii)(B)(2) of the regulations

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# Regulation Highlights<sup>23</sup>

Regulations **DO NOT** adopt permissive exclusions for universal availability concerning:

- Collective bargaining employees
- Visiting professors
- Employees who have taken a vow of poverty
- Employees who make a one-time election to participate in a governmental non-403(b) plan.

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23 - [1.403\(b\)-11\(d\)\(1\)&\(2\)](#)

# Regulation Highlights<sup>24</sup>

**Contribution amounts must be transferred to providers within a period no longer than is reasonable for proper plan administration.**

**EXAMPLE**

→ **Transferring elective deferrals within 15 business days following the month in which these amounts would have been paid to the participant**

**ERISA – tighter standards**

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24 - [1.403\(b\)-8\(b\)](#)

## Regulation Highlights

- No more separate contracts of incidental life insurance with 403(b) <sup>25</sup>
  - Exception – contracts issued up to 60 days after publication of the regulations are grandfathered
  - Incidental benefits permitted
    - Death
    - Disability <sup>26</sup>

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25 - [1.403\(b\)-8\(c\)\(2\)](#)

26 - [1.403\(b\)-6\(g\)](#)

# Regulation Highlights<sup>27</sup>

Old

Revenue Ruling 90-24 –  
**annuity-to-annuity transfers**  
with no employer involvement

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27 - [1.403\(b\)-10\(b\)\(1\)](#)

# Regulation Highlights

## The New Transfer Regime <sup>28</sup>

- Exchanges within same plan
  - Plan permits
  - Benefit not diminished
  - Undiminished distribution restrictions
  - Employer and issuer enter into information sharing agreement

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28 - [1.403\(b\)-10\(b\)\(2\)](#)



# Regulation Highlights

## The New Transfer Regime <sup>29</sup>

### ▶ Plan-to-plan

- ▶ Participant is employee or former employee of employer for receiving plan
- ▶ Transferor and receiving plans permit
- ▶ Benefit not diminished
- ▶ Undiminished distribution restrictions

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29 - [1.403\(b\)-10\(b\)\(3\)](#)

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**IRC 403(b) Tax-Sheltered Annuity Plans**  
 A 403(b) tax-sheltered annuity (TSA) plan is a retirement plan offered by [public schools](#) and [certain tax-exempt organizations](#). An individual's 403(b) annuity can be obtained only under an employer's TSA plan.

**General Questions**  
**Who can establish a 403(b) plan?**  
 You are allowed to have a 403(b) plan if you are a:
 

- Public school, college or university or
- Charitable entity tax-exempt under section 501(c)(3) of the Code.

**How do 403(b) plans work?**  
 Basically, 403(b) plans are similar to 401(k) plans. Just as with a 401(k) plan, a 403(b) plan lets employees defer some of their salary. In this case, their deferred money goes to a 403(b) plan sponsored by the employer.

**What are the advantages of participating in a 403(b) plan?**  
 There are significant tax advantages for participants in a 403(b) tax-sheltered annuity:
 

- Contributions to a 403(b) annuity are tax deferred,
- Earnings are tax deferred, and
- The annuity is portable.

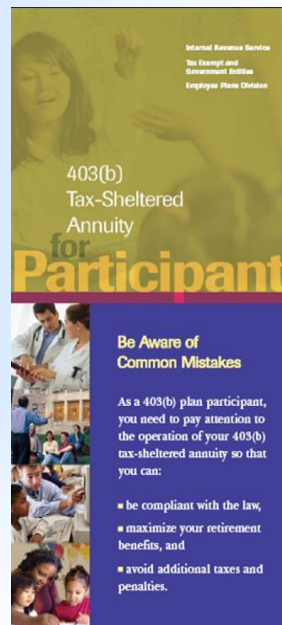
**Ask Bob Architect!!!**  
 Bob Architect, Senior Tax Law Specialist and the resident expert on 403(b) plans, receives many questions while presenting the latest 403(b) information to organizations. See the most frequently asked questions and Bob's answers here.

**Resources:**  
**Guidance:**  
[403\(b\) Final Regulations](#)  
 Issued July XX, 2007, with a general effective date of taxable years beginning after December 31, 2008.  
[Overview](#)  
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**Related Guidance:**  
[Notice 2007-7, Pension Protection Act Guidance](#)  
[Final 415 Regulations](#)  
[Notice 2006-5, Automatic Rollover](#)  
**Prior Law Guidance**  
[Exam Guidelines](#)  
[I.T. Reg. 1.403\(b\)-1](#)  
[I.T. Reg. 1.403\(b\)-2](#)  
[Correcting Plan Errors](#)  
**Publications:**  
[Choose a Retirement Plan for](#)

This button provides information on starting and maintaining a retirement plan including what kinds of plans are available, how they work and the benefits of having a retirement plan.

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Internal Revenue Service  
Tax Exempt and Government Entities  
Employee Plans Division

## 403(b) Tax-Sheltered Annuity for Participant

**Be Aware of  
Common Mistakes**

As a 403(b) plan participant, you need to pay attention to the operation of your 403(b) tax-sheltered annuity so that you can:

- be compliant with the law,
- maximize your retirement benefits, and
- avoid additional taxes and penalties.



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PLAN	KEY ADVANTAGE	SPONSOR/ELIGIBLE EMPLOYER	EMPLOYER'S ROLE	CONTRIBUTORS TO THE PLAN
<b>Payroll Deduction IRA</b>	easy to set up and maintain	any employer	<ul style="list-style-type: none"> <li>- arrange for employees to make payroll deduction contributions</li> <li>- transmit contributions for employees to IRA</li> <li>- no annual filing requirement</li> </ul>	employee can decide how much to contribute any time
<b>SEP</b>	easy to set up and maintain	any employer	<ul style="list-style-type: none"> <li>- set up plan - employer may use Form 5305-SEP</li> <li>- transmit contributions for employees to IRA</li> <li>- generally, no annual filing requirement</li> <li>- bank or financial institution handles most of the paperwork</li> </ul>	employer can decide whether to make contributions year-to-year

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# Questions



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# Addendum

1. 1.403(b)-11(a)
2. 1.403(b)-11(b)-(d)
3. 1.403(b)-11(e)-(g)
4. 1.403(b)-3(b)(3) and 1.403(b)-3(d)(1)(i)&(ii)
5. 1.403(b)-3(a)(4)-(8)
6. 1.403(b)-3(d)(2)
7. 1.403(b)-4(c)(3)(iv)
8. 1.403(b)-4(c)(5) examples 4, 11 and 12
9. 1.403(b)-4(b)(2)
10. 1.403(b)-3(b)(4)(ii)

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# Addendum

11. 1.403(b)-4(e)(2)
12. 1.403(b)- 4(e)(5) & 1.403(b)- 4(e)(9) examples 1&2
13. 1.403(b)-4(d)(1)
14. 1.403(b)-4(d)(2) examples 1, 2, and 3
15. 1.402(g)(3)-1(b)
16. 1.403(b)-6(d)(2)
17. 1.403(b)-5(b)(1)
18. 1.403(b)-5(b)(2)
19. 1.403(b)-5(b)(3)
20. 1.403(b)-5(b)(4)(ii)(A)

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# Addendum

21. 1.403(b)-5(b)(4)(ii)(E)
22. 1.403(b)-5(b)(4)(iii)(B)
23. 1.403(b)-11(d)(1)&(2)
24. 1.403(b)-8(b)
25. 1.403(b)-8(c)(2)
26. 1.403(b)-6(g)
27. 1.403(b)-10(b)(1)
28. 1.403(b)-10(b)(2)
29. 1.403(b)-10(b)(3)
30. Rev Proc 2007-71

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